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MISCELLANY.

MONTANA JUDGES HELD FOR CONTEMPT.—Judge E. W. Harney of the District Court of Montana, about whom sensational charges have recently been made in connection with his decision in the Minnie Healey mine case, the report being that he was influenced in his decision by a Mrs. Ida H. Brackett, was recently placed constructively under arrest for his refusal to appear before a notary public and give his deposition in regard to matters pertaining to the case. The judge denies the jurisdiction of the notary. Another case of a Montana judge held for contempt is that of Judge Dudley Du Bose, who is now serving a sentence of six months in the Alameda county, California, jail on the charge of contempt before the United States Circuit Court of Appeals in connection with Alaskan mining litigation.—*Law Notes*.

PRESIDENT MCKINLEY'S WILL.—We print below a copy of the will of the late President McKinley—whose untimely death the whole world mourns. If a Virginia court were called upon to construe this will, there would be much room for the argument that instead of Mrs. McKinley's taking a life estate, as the testator clearly intended, she takes a fee-simple, charged only with the annuity to the testator's mother, and to the exclusion of the remaindermen. The Virginia courts have pushed to the utmost limit what is known in this State as "the doctrine of *May v. Joynes*" (20 Gratt. 692)—that is that a limitation for life, and "what remains" over in fee to another, carries a fee-simple to the first taker—whether the estate be real or personal. See *Farish v. Wayman*, 91 Va. 430, 21 S. E. 810, 1 Va. Law Reg. 214 and note by Judge Burks collecting the Virginia authorities. See also a striking illustration of the extremity to which the doctrine has been carried, in *Robertson v. Hardy* (Va.), 23 S. E. 766.

In most of the States the courts are more liberal in upholding the intention of the testator, and limiting the estate in such case to a life estate in the first taker, unless it distinctly appear that such was not the intention of the testator. See *Giles v. Little*, 104 U. S. 291; *Rubey v. Barnett*, 12 Mo. 3, 49 Am. Dec. 112, and note, 115-119. Compare *Roberts v. Lewis*, 153 U. S. 367. In 3 Va. Law Reg. 65 will be found an excellent discussion of this subject, by Prof. Graves, in which are reviewed both the Virginia doctrine and that generally prevailing elsewhere.

The will in question is as follows:

"I publish the following as my latest will and testament, hereby revoking all former wills:

"To my beloved wife, Ida S. McKinley, I bequeath all of my real estate, wherever situated, and the income of any personal property of which I may be possessed at death, during her natural life. I make the following charge upon all my property, both real and personal:

"To pay my mother during her life \$1,000 a year, and at her death said sum to be paid to my sister, Helen McKinley. If the income from property be insufficient to keep my wife in great comfort and pay the annuity above provided, then I direct that such of my property be sold so as to make a sum adequate for both purposes. Whatever property remains at the death of my wife, I give to my

brother and sisters, share and share alike. My chief concern is that my wife from my estate shall have all she requires for her comfort and pleasure, and that my mother shall be provided with whatever money she requires to make her old age comfortable and happy.

"Witness my hand and seal this 22d day of October, 1897, to my last will and testament, made at the City of Washington, District of Columbia.

"WILLIAM MCKINLEY."

A DISTINGUISHED INDIAN JUDGE.—The July number of the Bombay (India) *Law Reporter* contains a sketch of the life of the late Mr. Justice Ranade, a native East Indian and at his death a member of the High Court of India. It says of him that the tributes paid to his memory by the government, the public and the press, Anglo-Indian and native, fully testify that India has lost the greatest man of the present generation. A portrait of the deceased jurist accompanies the sketch, and represents him as clad in his official robes, with white turban and sashes.

The following extract gives an idea of some of the curious questions arising under Hindu jurisprudence :

"No more important function falls to the lot of an Indian judge than that of ascertaining and applying the personal law of the various communities which inhabit this country. The whole system of modern Hindu law is thus a superstructure raised on old foundations, to which every judge who has sat on the High Court bench has contributed his mite. Mr. Justice Ranade's contribution to this branch of Indian judiciary law has been both solid in quality and large in quantity. His great *forte* was his intimate knowledge of life in the mofussil. A judge who administers Hindu law has not merely to consider whether a particular rule can be deduced from old texts and commentaries, but also to satisfy himself that it has been accepted as law by the current usage of the people. And who could speak with higher authority on this usage than Mr. Justice Ranade? Thus, on the question of adoption by a widow, who had not removed her hair, or the adoption by her of her brother's son, or of a son older than herself, or the right to recognition as regenerate classes, of castes that claimed to be so, his opinion of what daily practice had made current, was almost conclusive."

One rarely sees a handsomer tribute to a dead judge than the following :

"Measured by almost any standard, Mr. Ranade was a great man. Even a stranger meeting him for the first time could not fail to recognize that he was in every way far removed from ordinary mortals. Though his stature, the massiveness of his head, the resoluteness of his face and the determination of his carriage were a little awe inspiring, yet his noble heart was all simplicity itself. He himself once said in a speech, 'No man can be called great who has not to the last hour of his life fulfilled the responsibility which greatness implies,' and it is in his own life that we see a vivid picture of this. Such a towering character, so glorious a career, deserves to be studied, for it will always remind the future generations that

"The height by great men reached and kept
Were not attained by sudden flight ;
But they, while their companions slept,
Were toiling upwards in the night."

"And though death has laid its icy hands on him, he has secured his niche in the temple of fame and has built himself a 'live-long monument.' "

DOUBLE ASSESSMENTS UPON SHAREHOLDERS OF NATIONAL BANKS—LOSS OF FUNDS BY RECEIVER.—An interesting decision in banking law was recently rendered by District Court Judge Newman in an action before the Circuit Court for the Northern District of Georgia (*Lease v. Barschall*, 106 Fed. Rep. 762). It was there held that—

1. Under the National Banking Act (Rev. St. sec. 5151), requiring that the shareholders of every national bank shall be held individually responsible, equally and ratably, and not one for another, for all debts of the bank, to the extent of the amount of their stock, at the par value thereof, in addition to the amount invested in such stock, a stockholder cannot be required to make good the failure of another stockholder to pay his assessment; and, where an assessment has been made, it must be considered, for the purpose of making a second assessment, as if the entire assessment had been paid.

2. Where stockholders of a national bank have paid an assessment to a receiver of the bank, the receiver becomes the trustee of the creditors; and any loss he may sustain by investments, in endeavoring to save the debts of the bank, cannot be charged to the shareholders, and made the subject of an additional assessment.

William Lease, receiver of the Chattahoochee National Bank, sought to recover from Barschall and others, stockholders, a second assessment of thirty-nine per cent.; there having been a former assessment of sixty-one per cent. Some \$14,802.17 of the amount sought to be collected was to make good the failure of stockholders to pay the amount of the former assessment. The exact language of the National Banking Act (Rev. St. sec. 5151), is as follows:

“The shareholders of every national banking association shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts and engagements of such association, to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such shares.”

No shareholder, it will seem, can be required to make good the failure of another shareholder to pay the amount of his assessment; and, where an assessment of \$61,000 is made, it must be considered, for the purpose of making another assessment, as if the entire \$61,000 had been paid.

In *United States v. Knox*, 102 U. S. 422, 26 L. Ed. 216, in the opinion by Mr. Justice Swayne, the Supreme Court states the rule in reference to the assessment of stockholders as follows:

“In the process to be pursued to fix the amount of the separate liability of each of the shareholders, it is necessary to ascertain (1) the whole amount of the par value of all the stock held by all the shareholders; (2) the amount of the deficit to be paid after exhausting all the assets of the bank; (3) then to apply the rule that each shareholder shall contribute such sum as will bear the same proportion to the whole amount of the deficit as his stock bears to the whole amount of the capital stock of the bank at its par value. There is a limitation of this liability. It cannot, in the aggregate, exceed the entire amount of the par value of all the stock.”

As to the rights of stockholders, in case an attempt is made to assess them in violation of this rule, this is stated :

“ Although assessments made by the controller under the circumstances of the first assessment in this case, and all other assessments, successive or otherwise, not exceeding the par value of all the stock of the bank, are conclusive upon the stockholders, yet if he were to attempt to enforce one made, clearly and palpably contrary to the views we have expressed, it cannot be doubted that a court of equity, if its aid were invoked, would promptly restrain him by injunction.”

It appears further that the receiver lost a large amount in endeavoring to save debts of the bank, by investing in various properties—a brewery, a coal mine, and an orange grove—and that it is attempted to make this good, also, by this additional assessment against the stockholders. It is clear that, after money has been paid by the stockholders into the hands of the receiver of a national bank, the receiver becomes the trustee of the creditors, and any loss he may sustain, however honest his endeavor to benefit the creditors of the bank, cannot be charged to the shareholders and made the subject of additional assessment. In *Scott v. Armstrong*, 146 U. S. 499, 13 Sup. Ct. 148, 36, L. Ed. 1059, it is said that the receiver of a national bank takes the assets in trust for the creditors. *Lease v. Barsehall*, 106 Fed. Rep. 762.—*The American Lawyer*.

EXCLUSIVE PRIVILEGES BY CARRIERS.—In view of the widespread interest in the recent decision of the Supreme Court of Appeals of this State, in *N. & W. R. Co. v. Old Dominion Baggage Co.* (6 Va. Law Reg. 693), permitting railroad companies under certain conditions to give exclusive privileges to baggagemen at stations, we print below the reports of two cases in which effort was made by the excluded baggagemen to bring themselves within the exception suggested by the Court of Appeals, namely, that such exclusive privilege must give way when it interferes with *public convenience*.

The first case reported below was disposed of in the Mayor's Court of Lynchburg—the opinion which we print being delivered by Mayor Smith.

The second case reported was decided by Judge George W. Morris, of the Corporation court of Charlottesville. No written opinion was delivered, but our report of the case fully discloses the grounds upon which the decision was rested.

Wingo v. Norfolk & Western Railroad Company—*Opinion by Mayor G. W. Smith* :

This is a warrant sworn out by R. E. Wingo against the Norfolk and Western Railway Company charging it with violating section 3 of an Act regulating common carriers, approved March 3, 1892, by giving an undue preference to the Lynchburg Transfer Company by leasing it the exclusive right to solicit baggage at the Union Station in the city of Lynchburg, the property of the Norfolk & Western Railway Company.

The statute in question has been construed by the Court of Appeals in the recent case of the *Norfolk & Western Railway Company v. The Old Dominion Baggage Company*, decided on the 17th of March, 1901 [6 Va. Law Reg. 693], the object of which suit was to restrain the Norfolk & Western Railway Company from giving the Lynchburg Transfer Company the exclusive right to enter its station property and solicit baggage, on the ground that it was an undue preference within the meaning of the above statute, and was, therefore condemned by it. The de-

cision of the Court of Appeals was in favor of the railway company, the court holding that the Act was intended to prevent a substantial injury or inconvenience to the public; that the mere fact that one baggage company was allowed to solicit baggage on the company's property, while the privilege was denied to another, did not in itself constitute a violation of the Act, but that it must appear on the complaint of those who use the railway that the action of the railway company, in granting this exclusive privilege, was so unreasonable as to result in a substantial inconvenience to the public, in which event the contract would be set aside.

In deciding the case before me, therefore, it is necessary to determine whether the exclusive right given to the Lynchburg Transfer Company to solicit baggage on the company's property works a substantial inconvenience to the public.

It is not charged in the complaint, nor is it contended, that any person or firm has been prevented in any way from delivering or receiving baggage at the station for the traveling public. The sole ground of complaint is that the Norfolk & Western Railway Company has given the Lynchburg Transfer Company the exclusive right to come on its property and solicit baggage. The question is whether or not the railway company, by giving this exclusive privilege, has violated the statute in question.

It appeared in the evidence that the contract with the Transfer Company was made on the 15th of March, 1901, and is to continue for one year; that the Transfer Company is given the exclusive right to enter the station property of the Norfolk & Western Railway Company for the purpose of soliciting baggage from incoming passengers; that it is also required to meet all trains and deliver baggage at any point in the city, or to call at any point in the city and receive baggage and deliver it to any train, at a charge not to exceed twenty-five cents for trunks and ten cents for valises, and in addition it is required to meet all trains with an adequate number of hacks and carry passengers to any point in the city, or to call with a hack at any point in the city and carry a passenger to any train, at a price not to exceed twenty-five cents for each passenger; the baggage company further agreed to pay the Norfolk & Western Railway Company a money consideration in return for this exclusive privilege of soliciting baggage on its property. It further appeared in evidence that Mr. Wingo is conducting a transfer business under the style of the Hill City Transfer Company, in competition with the Lynchburg Transfer Company, and that he is compelled to solicit baggage at the head of the steps leading up from the depot, and that his rates for hauling baggage do not exceed fifteen cents. It was contended that the fact that he could not come upon the company's property and solicit baggage worked a substantial public inconvenience, in that it compelled a passenger, if he wished to avail himself of the fifteen-cent rate, to go up the flight of steps at the station to employ Mr. Wingo, or his agents. Conceding, for the sake of the argument, that Mr. Wingo is entitled to make this complaint, it does not seem to me that, in the light of the decision of the Court of Appeals, the contract complained of can be said to work a *substantial* inconvenience to the public. If a passenger wishes to save ten cents in the hauling of his baggage he can do so by going to the head of the steps, which is near by and in plain view of the station. Mr. Wingo and every other member of the public has access to the station property for the delivery of or the removal of baggage, or for any other purpose except the soliciting of baggage from incoming trains. If passengers do not object to paying twenty-five cents for the delivery of

their baggage there are agents immediately at hand ready to receive it, and if they prefer to employ Mr. Wingo, or anybody else, at a lower rate than twenty-five cents, they can do so by going to the head of the steps in question for that purpose.

My feelings and judgment are against any contract or combination which constitutes a monopoly, but I do not think, in view of the decision of the Court of Appeals, I would be justified in holding the contract in this case void. It may be some inconvenience, in individual cases, to go to the head of the steps at the station to employ Mr. Wingo, but this can hardly be said to constitute a substantial inconvenience to the public, which is necessary to the granting of the relief asked for. If, however, it should be made to appear at any future time that this contract, in the manner in which it was carried out, was so unreasonable as to result in substantial inconvenience to the public, I would not hesitate to condemn it.

Counsel for Mr. Wingo relied with great earnestness on the brief of the attorneys for the Old Dominion Transfer Company in the Court of Appeals, but as the unanimous decision of the Court of Appeals was against the views expressed in that brief it cannot be received as authority in this court.

The warrant must be dismissed.

City of Charlottesville v. William Shepherd—Report of decision by Judge George W. Morris:

This case came up in the Corporation court of the city of Charlottesville upon an appeal from the judgment of the police justice imposing a fine for trespass upon "the railroad property of the Southern Railway Company," under an ordinance of the city of Charlottesville. The facts developed in the trial of the case were as follows:

For years past the baggage delivery and transfer business in and adjacent to the city of Charlottesville had been in the hands of eight or ten colored men with wagons licensed by the city. In September, 1900, the Southern Railway Company entered into a contract with Eldridge Turner and W. T. Cloud, calling themselves "The Charlottesville and University Transfer Company," whereby they were given certain rights of soliciting on trains and, in order to do so, of riding between stations, but giving them no exclusive privilege of entrance to and soliciting at stations. Early in September, 1901, it was alleged, this contract was transferred to one A. C. Mitchell (though no written evidence of such transfer or of any obligation assumed by Mitchell was produced at the trial.)

A day or two prior to September 13, 1901, Z. L. Dameron, a policeman of the city of Charlottesville, employed at the Southern Railway depot, and in part paid by the Southern Railway Company, acting under written instructions from the Southern Railway Company (which were in evidence at the trial), warned all of the negro baggage men that they would no longer be permitted to come upon the property of the railway company, except when in the actual possession of a check for baggage, and that then they must go directly to the baggage-room and get the baggage and go away; and that, in soliciting trade, they must come no nearer than the public street, which, as appeared in evidence, was fully fifty feet from the station and not in the pathway of passengers who departed by vehicle. That, on and after that date, only the Charlottesville and University Transfer Company's agents would be given access to the station property to solicit business. The baggage men disobeyed this warning, and five of them were arrested under warrants

issued by the police justice for trespassing upon the "railroad property of the Southern Railway Company." The warrants were issued under a city ordinance. Four cases were dismissed by the justice, and in the fifth, that of Shepherd, a fine was imposed. This case was then appealed.

In addition to the facts stated above, it appeared at the trial that the Charlottesville and University Transfer Company had and paid license on only one wagon. That just at this season of the year University students and school-boys and school-girls were coming in to Charlottesville by the hundred; and that all of the wagons of all of the baggage men were in use until late at night in delivering baggage. That the contract of the Charlottesville and University Transfer Company obligated them to deliver baggage within, but not outside of, city limits (though, as a matter of fact, they did deliver outside), and that a very large part of the baggage arriving was for delivery outside of the city. There was no evidence that the baggage business had not been conducted theretofore by the negro baggage men in an orderly and satisfactory manner.

The court, in rendering its decision, stated that it felt constrained, of course, to follow the decision of the Supreme Court in the case of the *Norfolk & Western Railway Company v. Old Dominion Baggage Company* in construing the Act of 1891-2, providing against "any undue or unreasonable preference or advantage," etc., being given by a common carrier, though, but for that case, it would have construed that statute differently, and for the reason that its intent seems plain in its language without reading into it the decisions of the English courts. But with that decision as the law of Virginia, the court held that, when the Southern Railway Company had made adequate provision for the public convenience by a proper contract providing for a sufficient number of wagons to insure prompt delivery of baggage for the travelling public, not only "inside" of the city of Charlottesville, but in the neighborhood adjacent thereto, and gave reasonable notice to other solicitors for baggage, it could then, and only then, lawfully and legally exclude baggage solicitors, other than those selected by it, from its station property; but that, pending this arrangement, it could lay down all proper and reasonable rules for their conduct while on its property, and might include in those rules a reasonable line within which the solicitors must confine themselves.

The court further held that said railway company had not, up to the present time, upon the facts presented, made such adequate provision for the public convenience, and dismissed the warrant against Shepherd at the cost of the Southern Railway Company (which had been marked as prosecutor), and instructed the policeman not to further interfere with negro baggage men until further and adequate arrangements for public convenience were made by the railway company and reasonable notice given of them.

QUESTIONS PROPOUNDED AT THE STAUNTON BAR EXAMINATION.

1. Give the several classes of absolute rights of man; the guards provided in England to secure these rights, and the constitutional guarantees in Virginia for their security and preservation.

2. State the doctrine as to dedication of highways to the public, and as to the extent of right acquired by the public in the land upon the opening of a highway.

3. State the doctrine as to master's liability for injuries to his servant arising from default of a fellow-servant.

4. What is the writ of *Habeas Corpus*? Give an illustration of a case in which it would be proper for the writ to issue, and a summary of the proceedings upon such a writ?

5. What is a corporation; how may it contract, and what are the advantages of an incorporation over a partnership? Also, state the proceedings in Virginia to obtain a charter of incorporation from a circuit or corporation court.

6. State the effect of a lessee being evicted of ten acres of a 100-acre lease by lessor and by a stranger, respectively. Also state effect at common law, and in Virginia, of covenant by tenant to repair, should the buildings on premises be destroyed without his default.

7. To whom, and in what proportions, would decedent's estate go upon his death, his surviving relatives being his mother, one legitimate and two bastard brothers, an illegitimate but acknowledged daughter of a deceased brother, and two illegitimate children of a deceased sister?

8. Give definition of a remainder, and of an executory limitation respectively, with an illustration of each; and give doctrine as to the effect of devise to A for life with remainder as to so much as he may not dispose of to B in fee.

9. How must a will be executed in Virginia, and in what ways may a will be revoked?

10. State nature of a joint tenancy, tenancy in common, and tenancy by entireties, respectively; and in what cases survivorship between joint tenants is still in force in Virginia.

11. What is direct evidence; what circumstantial, and what is hearsay evidence, and grounds on which it is excluded, with exceptions to the rule?

12. How may credit of a witness be impeached, and doctrine as to right of party to impeach his own witness?

13. When one of the original parties to a contract is dead, insane or incompetent to testify by reason of infamy or other legal cause, in what cases can the other party to the contract testify?

14. Who are accomplices; the doctrine as to admissibility of evidence of accomplice? How far is such evidence credible, and what is necessity of corroboration in such case?

15. State the doctrine as to dying declarations; what they are, why admitted, and under what circumstances admitted.

16. What is the order in which testamentary assets will be successively applied? Also state in what order are debts of a decedent paid?

17. Under the doctrine as to a notice of an equity, what degree of information will amount to notice, and when may a person be affected with notice, in the absence of any actual information?

18. State the particulars wherein the right of personal security consists, and give definition of an executory contract, and also of a valuable consideration.

19. State the mode of enforcing performance of an award where the submission

is by bond, and the award is, first, to pay money, and, second, to convey land. Also state on what grounds, and by what proceedings, an award may be set aside.

20. State the circumstances which may bring about a change of parties to a suit; and how are the new parties brought in?

21. What are the pleas known as dilatory pleas, and when must they be filed?

22. State the nature of a mechanics' lien, the manner of securing it, and how enforced.

23. State the doctrine as to the use of the special plea of set-off in Virginia.

24. State the principal grounds of new trial, and course to be taken if they are not known till the term is ended.

25. State when and how an attachment for rent is obtained; for what rent, and on what property to be levied.

26. State doctrine applicable to loans of chattels at common law, and also in Virginia.

27. Under what circumstances is a guarantor or surety discharged?

28. Doctrine as to time of payment of a debt payable on demand; payable on demand at a particular place, and payable so many days after date?

29. State doctrine as to vendor's liability for title and quality of chattels.

30. Give the definition of a bailment, and under what circumstances bailee is liable for different degrees of neglect.

31. Under what circumstances, if any, may the maker of a negotiable note successfully resist its payment in the hands of a *bona fide* holder for value?

32. State the doctrine as to the necessity under the law merchant of protest of negotiable paper, and how is this in Virginia.

33. State the several ways in which a partnership may be dissolved.

34. Why is there a difference between liability of common carrier of goods and of passengers?

35. What are the particulars wherein the law of distribution differs from the law of descents?

36. What is a donation *mortis causa*, and circumstances necessary to its validity?

37. State the doctrine as to ademption in cases of general, specific, and demonstrative legacies, respectively, and give an illustration of each of these classes of legacies.

38. What are the several crimes in Virginia for which capital punishment is inflicted; and how must all indictments conclude?

39. State the several kinds of felonious homicide, and give definition of murder in first degree in Virginia, and also of murder in second degree.

40. What are the several steps in regular proceedings against persons accused of crime?

SUCCESSFUL APPLICANTS AT THE STAUNTON EXAMINATION.

Milton P. Bonifant, Macon, Va.

H. H. Byrd, Williamsville, Va. (B. L., Univ. Va.).

Mayo Cabell, Norwood, Va. (Univ. Va. Summer School).

- John W. Chalkley, Big Stone Gap, Va. (Univ. Va.).
Geo. P. Cridlin, Jonesville, Va. (Univ. Va. Summer School).
H. M. Fox, Salem, Va. (Wash. & Lee Univ.).
Geo. S. Hairston, Pulaski, Va. (Wash. & Lee Univ.).
J. Harry Rew, Parksley, Va. (B. L., Richmond Coll.).
John L. Logan, Salem, Va. (Univ. Va. Summer School).
A. H. McDannald, Warm Springs, Va. (B. L., Univ. Va.).
Arthur J. Morris, Norfolk, Va. (B. L., Univ. Va.).
R. O. Norris, Jr., Lively, Va. (B. L., Richmond Coll.).
W. B. Pattie, Richmond, Va. (B. L., Richmond Coll.).
A. O. Porterfield, Bland, Va. (Univ. Va. Summer School).
Chas. E. Plummer, Petersburg, Va. (Univ. Va.).
Geo. R. Richardson, Warm Springs, Va. (B. L., Wash. & Lee).
William H. Rouse, Marion, Va.
O. M. Turner, Lynch's, Va. (Univ. Va. Summer School).